

# **VULNERABLE ADULT PROTECTIVE SERVICES POLICIES AND PROCDURES**

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## **Service Chapter 690-01**

**North Dakota Department of Human Services  
600 East Boulevard Dept. 325  
Bismarck, ND 58505-0250**

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## **Vulnerable Adult Protective Services Policies and Procedures 690-01**

### **Purpose 690-01-01**

**(Revised 4/1/13 ML 3366)**

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This manual outlines the Policies and Procedures governing the administration, management, funding, and implementation of state and community services funded under the Older Americans Act, Title III and VII.

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**Legal Authority 690-01-05**

**(Revised 1/15/14 ML 3394)**

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- Public Law 109-365, Older Americans Act of 1965, as amended in 2006; 42 U.S.C. § 3001 et seq.;
- North Dakota Century Code Chapter [50-25.2](#); and
- North Dakota Century Code Section [50-06-05.3](#); and
- North Dakota Century Code Chapter [12.1-31-07](#), 07.1, 07.2, and
- North Dakota Century code Chapter [25.01.3-04](#).

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**Definitions 690-01-10**  
**(Revised 1/15/14 ML 3394)**

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**Abuse** – Any willful act or omission of a caregiver or any other person which results in physical injury, mental anguish, unreasonable confinement, sexual abuse or exploitation, or financial exploitation to or of a vulnerable adult. N.D.C.C. § [50-25.2-01\(1\)](#).

**Administrative Action** – any action or decision made by an owner, employee, or agent of a long-term care facility, or by a public agency, which affects the provision of services to a resident of a long-term care facility. N.D.C.C. § [50-10.1-01\(1\)](#).

**Adult** – Includes a minor emancipated by marriage. N.D.C.C. § [50-25.2-01\(2\)](#).

**Adult Protective Services** – Remedial, social, legal, health, mental health, and referral services provided for the prevention, correction, or discontinuance of abuse or neglect which are necessary and appropriate under the circumstances to protect an abused or neglected vulnerable adult, ensure that the least restrictive alternative is provided, prevent further abuse or neglect, and promote self-care and independent living. The term includes the following services provided by the department or the department's designee:

1. Receiving, evaluating, and assessing reports of alleged abuse, neglect, or exploitation;
2. Short term crisis intervention and arranging for the provision of essential services such as case management and counseling;
3. Arranging for and coordinating the provision of other services, including financial management or assistance, legal assistance, and the services of domestic violence programs;

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4. Monitoring the delivery of services to vulnerable adults making progress assessments; and
5. Arranging for or providing and coordinating other services consistent with state law. N.D.C.C. § [50-25.2-01\(3\)](#).

**Aging Services Division** – The North Dakota Department of Human Services, Aging Services Division is the designated state agency in North Dakota to carry out the provisions of the Older Americans Act of 1965, as amended including the provision of Title VII programs for prevention of elder abuse, neglect, and exploitation.

**Caregiver** – Any person who has assumed the legal responsibility or a contractual obligation for the care of a vulnerable adult, or has voluntarily assumed responsibility for the care of a vulnerable adult. The term includes a facility operated by any public or private agency, organization, or institution that provides services to, and has assumed responsibility for the care of a vulnerable adult. N.D.C.C. § [50-25.2-01\(4\)](#).

**Conflicting Needs** - Occurs when there are health and safety needs for both the vulnerable adult and the caregiver or other individuals. Examples include a vulnerable adult who is physically threatening to a caregiver; a chemically dependent or mentally ill parent with minor children; and a pregnant, chemically dependent woman (both she and the unborn child have safety needs).

**Department** – The North Dakota Department of Human Services.

**Department Designee** – Any individual or entity that has been given the responsibility for duties delegated under this Service Chapter.

**Emotional Abuse** - Exists when an individual acts in a manner that produces psychological stress or distress for the vulnerable adult. Emotional abuse may exist when the caregiver or legal guardian refuses

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the vulnerable adult access to services necessary for well-being; when an individual subjects a vulnerable adult to terrorization, excessive humiliation or verbal abuse; when an individual threatens the vulnerable adult's family, friends, pets, or otherwise subjects the vulnerable adult to coercive measures.

**Essential Services** – Those services necessary to maintain and safeguard the physical and mental health of the vulnerable adult which include sufficient and appropriate food and clothing, temperate and sanitary shelter, treatment for mental or physical needs, appropriate treatment for medical needs as determined by a physician or other health care provider, and proper supervision. N.D.C.C. § [50-25.2-01\(6\)](#).

**Financial Exploitation** – The taking or misuse of property or resources of a vulnerable adult by means of undue influence, a breach of a fiduciary relationship, deception, harassment, criminal coercion, theft, or other unlawful or improper means. Involves the use or misuse of the vulnerable adult's finances, property, or real estate without the knowledge or consent of the vulnerable adult. Financial exploitation includes extortion, embezzlement, illegal rental or sale of property, scams, fraud, theft, or abuse of property or assets. N.D.C.C. § [50-25.2-01\(7\)](#).

**Least Restrictive Alternative** – Adult protective services provided in a manner no more restrictive of a vulnerable adult's liberty and no more intrusive than necessary to achieve and ensure the provision of essential services. N.D.C.C. § [50-25.2-01\(8\)](#).

**Living Independently** – Includes using the telephone, shopping, preparing food, housekeeping, and administering medications. N.D.C.C. § [50-25.2-01\(9\)](#).

**Long-Term Care Facility** - A skilled nursing care facility, basic care facility, assisted living facility, or swing-bed hospital.



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**Medical and Mental Health Professional** -- a professional or personnel providing health care or services to a vulnerable adult, on a full-time or part-time basis, on an individual basis or at the request of a caregiver, and includes a physician, nurse, medical examiner, coroner, dentist, dental hygienist, optometrist, pharmacist, chiropractor, podiatrist, physical therapist, occupational therapist, addiction counselor, counselor, marriage and family therapist, social worker, mental health professional, emergency medical services personnel, hospital personnel, nursing home personnel, congregate care personnel, or any other person providing medical and mental health services to a vulnerable adult. N.D.C.C. § [50-25.2-03\(1\)](#).

**Mental Anguish** – Psychological or emotional damage that requires medical treatment or care, or is characterized by behavioral change or physical symptoms. N.D.C.C. § [50-25.2-01\(10\)](#).

**Neglect** – The failure of a caregiver to provide essential services necessary to maintain the physical and mental health of a vulnerable adult, or the inability or lack of desire of the vulnerable adult to provide essential services necessary to maintain and safeguard the vulnerable adult's own physical and mental health. Neglect may include failure to provide hygienic living conditions; failure to administer medications properly; failure to provide adequate supervision during caregiver absences; failure to provide adequate basic needs (food, medical care, shelter); and failure to correct inadequate housing (windows broken, lack of indoor plumbing, heating). N.D.C.C. § [50-25.2-01\(11\)](#).

**Physical Abuse** - Occurs when an individual causes physical injury to a vulnerable adult. Probable cause for physical abuse includes: bruises, abrasions, welts, cuts, broken bones, dislocations, puncture wounds, brain injury, and death. If there is probable cause for physical abuse, the worker may refer the vulnerable adult for physical examination, notify law enforcement, or otherwise ensure the safety and appropriate care for the vulnerable adult through local domestic violence programs or agencies.

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**Physical Injury** – Damage to bodily tissue caused by non-therapeutic conduct, which includes fractures, bruises, lacerations, internal injuries, dislocations, physical pain, illness, or impairment of physical function. N.D.C.C. § [50-25.2-01\(12\)](#).

**Self-Care** – Includes maintaining personal hygiene, eating, and dressing. N.D.C.C. § [50-25.2-01\(13\)](#).

**Self-Neglect** - The most common form of abuse and neglect in vulnerable populations, occurs when the adult, of his or her own choice, fails to provide adequate self-care. Examples of self-neglect include choosing not to take medications prescribed by a physician, choosing not to eat adequate meals and maintain nourishment; choosing to utilize finances improperly (failure to pay bills); inadequate personal hygiene (matted hair, soiled clothing).

**Sexual Abuse or Exploitation** – Involves using the vulnerable adult in non-consenting sexual acts, or other activities, to satisfy or arouse sexual or aggressive desires in the other initiating individual. Sexual abuse includes sexual contact, including touching of intimate body parts or penetration; sexual exploitation, using the vulnerable adult to create pornography; rape; incest; and sexual harassment. Includes sex offenses defined in North Dakota Century Code Chapters 12.1-20-02, 12.1-20-03, 12.1-20-04, 12.1-20-05, 12.1-20-06, 12.1-20-07, and 12.1-20-11. N.D.C.C. § 50-25.2-01(14).

**Substantial Functional Impairment** – A substantial incapability, because of physical limitations of living independently or providing self-care as determined through observation, diagnosis, evaluation, or assessment. N.D.C.C. § [50-25.2-01\(15\)](#).

**Substantial Mental Impairment** – A substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care as revealed by

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observation, diagnosis, evaluation, or assessment. N.D.C.C. § [50-25.2-01\(16\)](#).

**Vulnerable Adult** - An adult who has a substantial functional or mental impairment. [(A) Substantial functional impairment is a significant limitation in the adult's ability to live independently or provide self-care. This limitation is due to physical incapacities that are determined through observation, diagnosis, evaluation or assessment. (B) Substantial mental impairment is a significant disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, or ability to live independently or provide self-care. It is determined through observation, diagnosis, evaluation or assessment.] N.D.C.C. § [50-25.2-01\(17\)](#).

**Vulnerable Adult Protective Services** - See Adult Protective Services.

**Willfully** – To engage in conduct or actions intentionally, knowingly, or recklessly. N.D.C.C. § [50-25.2-01\(18\)](#).

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**Division Administrative and Management Functions  
690-01-15**

**(Revised 1/15/14 ML 3394)**

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The Department of Human Services, Aging Services Division, in cooperation with county social services will develop, administer, and implement the Vulnerable Adult Protective Services Program in North Dakota.

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**Program Implementation 690-01-15-01**  
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Aging Services Division, in cooperation with county social services, has established the Vulnerable Adult Protective Services Program in accordance with the requirements of Title VII and III of the Older Americans Act and consistent with State law.

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**Funding 690-01-15-01-05**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Technical Assistance 690-01-15-01-10**

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**Confidentiality 690-01-15-01-15**

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**Appeals 690-01-15-01-20**

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**Education and Training 690-01-15-01-25**

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**Duties of Regional Human Service Centers**  
**690-01-15-01-30**

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**Program Reporting Requirements - Regional Human  
Service Centers 690-01-15-01-30-01**

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**Fiscal Reporting - Regional Human Service Centers**  
**690-01-15-01-30-05**

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**Maintenance of Client Files - Regional Human Service  
Centers 690-01-15-01-30-10**

**REPEALED**

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**Hearings 690-01-15-05**  
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Aging Services Division conducts public hearings to obtain input for the development of the State Plan on Aging, which includes the Vulnerable Adult Protective Services Program. The views of older individuals and other interested parties are considered in the development of the State Plan.

Additional public hearings are scheduled upon request or as necessary.

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**Funding 690-01-15-10**  
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Each year Congress appropriates Older Americans Act funds to carry out programs for the prevention of elder abuse, neglect, and exploitation.

Older Americans Act funds cannot be expended for clients under the age of 60.

The department and county social service boards are not required to implement or enforce this chapter with respect to any region, area, or county of this state if the legislative assembly does not provide an appropriation to support the implementation and enforcement of this chapter within that region, area, or county. N.D.C.C. § [50-25.2-14](#).



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**Technical Assistance & Education 690-01-15-15**  
**(Revised 1/15/14 ML 3394)**

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Aging Services Division provides technical assistance and education in the implementation of the Vulnerable Adult Protective Services Program. Upon request, technical assistance is provided to other agencies, organizations, and individuals.

All requests for technical assistance, including inquiries requiring legal clarification and guardianship, should be directed to Aging Service Division Elder Rights Program Administrator. The Elder Rights Program Administrator will contact the Department of Human Services' Legal Advisory Unit as necessary for information and clarification.

**Community and Staff Training**

Aging Services Division, in cooperation with other agencies, shall conduct a public education program to identify and prevent abuse, neglect, and exploitation. The education program shall include:

- Information regarding the laws governing the abuse, neglect, or exploitation of vulnerable adults;
- Mandatory reporting;
- The need for and availability of Vulnerable Adult Protective Services; and
- Information for caregivers regarding services to alleviate the emotional, psychological, physical, or financial stress associated with the caregiver or vulnerable adult relationship. N.D.C.C. § 50-25.2-13.

Aging Services Division, in cooperation with other agencies, shall institute a program of education and on-going training for staff, law enforcement

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agency staff, and other persons who provide Vulnerable Adult Protective Services. N.D.C.C. § 50-25.2-13. The training shall include:

- The philosophy of the Vulnerable Adult Protective Services Program;
- State and Federal law;
- Department policies and procedures;
- Mandatory reporting;
- Evaluation and assessment;
- Legal remedies;
- Confidentiality; and
- Community resources.

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**Confidentiality 690-01-15-20**

**(Revised 1/15/14 ML 3394)**

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Aging Services Division is governed by the confidentiality policies of the Department of Human Services, service Chapter 110-01 and various state and federal laws.

All clients should be given a copy of the Notice of Privacy Practice document found here: <http://www.nd.gov/dhs/info/pubs/docs/notice-privacy-practices.pdf>. Upon receipt, the client should be asked to sign [SFN 936](#) "ACKNOWLEDGEMENT OF RECEIPT OF THE NOTICE OF PRIVACY PRACTICES" (<http://www.nd.gov/eforms/Doc/sfn00936.pdf>). If unable or unwilling to sign, document as such in in the Harmony for Adult Protective Services (HAPS) web-based data collection system.

All reports or referrals, including the identity of the reporter, and all records and information obtained or generated as a result of the report or referral are confidential.

An individual making a report or referral should be advised of the confidentiality of the report or referral; however, the reporter should also be informed that the right to remain anonymous is not guaranteed, especially if the identity of the report is subject to disclosure by subpoena or court order. The individual making the report or referral should also be informed of his or her immunity from liability and, if applicable, the prohibition against employer retaliation.

Neither the State, nor the Department may require any provider of legal assistance to reveal any information that is protected by the attorney-client privilege.

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While the worker may see the vulnerable adult as needing services, the worker may be legally mandated to report other aspects of the case. The legal mandate to report supersedes the right of confidentiality or the needs identified in a voluntary program. The worker must also be concerned with the health and safety needs of caregivers or other individual. N.D.C.C. § 50-25.2-07

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## **Authorized Disclosures 690-01-15-25**

**(Revised 1/15/14 ML 3394)**

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Records and information obtained or generated as the result of a report or referral must be made available to the following upon request:

- A physician who examines a vulnerable adult whom the physician reasonably suspects may have been subject to abuse or neglect;
- Authorized staff of the Department or the Department's designee, law enforcement agencies, and other agencies investigating, evaluating, or assessing the report or providing adult protective services.
- A person who is the subject of a report or referral, if the identity of the person(s) reporting the alleged abuse, neglect, or exploitation is protected;
- Public officials, and their authorized agents, who require the information in connection with the discharge of their official duties;
- A court when it determines that the information is necessary for determination of an issue before the court; and
- A person engaged in a bona fide research or auditing purpose if no information identifying the subjects of a report or referral is made available to the research or auditor. N.D.C.C. § 50-25-.2-12.

The Aging Services Division Elder Rights Program Administrator must be contacted prior to the disclosure of any reports or referrals or records to the courts.

When information is requested by any individual who might be identified as "public officials and their authorized agents who require such information in connection with the discharge of their official duties" (NDCC 50-25.1-11(5)), it must first be determined whether the individual truly meets the definition of a "public official". The term 'public officials' as used in NDCC 50-25.1-11(5) is defined to refer to those individuals whose powers are

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statutorily derived and whose authority and duties are defined, regulated and prescribed by law.

It is also necessary to verify that the "official" is requesting information in their role as a "public official" (not in the capacity of a friend, business associate, or family member) and who requires the information in connection with the discharge of their official duties (not as a matter of curiosity, or as a favor for a constituent).

Persons identified as "public officials" include: elected officials of a state, county, city, or school district (such as the governor, a senator or congressman, a state **legislator**, sheriff, county commissioner, or school board member); and persons appointed or hired to fill a statutorily derived role (such as police chief /police officer, county coroner, forensic medical examiner, etc.).

Information may be provided to a public official, upon request, in written form, designated as a copy and confidential. A cover letter shall state "The information is being provided to the person(s) as a public official who needs the information in connection with the discharge of their official duties and the information remains confidential."

The following procedures must be followed:

1. The following types of information **may not be** disclosed or discussed:
  - a. Information covered by 42 C.F.R. Part 2, regarding confidentiality of substance abuse treatment records; and
  - b. Information identifying an adoptive parent, relinquishing parent, adopted person, genetic parent, or genetic sibling in an adoption.
2. Employees may decline to disclose information pursuant to an implied authorization where, in the exercise of the employee's professional judgment, an implied authorization is not justified.

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3. The name, title, and telephone number of the individual inquiring on behalf of the client should be obtained. If the circumstances lead you to question the authenticity of the call, you may inform the caller that you will call back when the appropriate records have been obtained. This allows you to verify that the caller is located at the purported office, to attempt to contact the client, and to locate the relevant information.
4. Reasonable care must be taken to verify the identity of the client.
5. Before disclosing or discussing the information, reasonable attempts should be made to verify the client's request for inquiry. Sometimes concerned relatives, friends, or neighbors will initiate the inquiry, but these requests do not give rise to an implied authorization. Only a request by the client creates an implied authorization, unless the client has a legal guardian or personal representative. If the inquiry is initiated by someone else, ask to speak to the client directly if the client is available. Otherwise, explain that you can only talk to the client.
6. Care should be taken to disclose only information necessary to make a meaningful response to the inquiry. Do not volunteer information, which is not relevant to the question asked. If you are unclear about exactly what the problem is or the question presented, ask for clarification. Do not disclose information about a client other than the client who initiated the inquiry.
7. Employees shall document in the client's permanent records, if applicable, all disclosures made under this section, including the identity of the inquirer, attempts to contact the client, and information disclosed.

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**Appeals 690-01-15-30**

**REPEALED**

**(Repealed 1/15/14 ML 3394)**

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**Grievances 690-01-15-31**

**(Revised 1/15/14 ML 3394)**

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A recipient of Older Americans Act funds/services may file a grievance in writing to the Director of the Aging Services Division. The grievance statement must list the facts related to the grievance, the nature of the grievance, and any request for resolution. The grievance should be made in writing within thirty (30) days of the action. A response to the grievance will be made within five (5) working days of receipt of the grievance.

All contract entities are required to include grievance procedures for older individuals who are dissatisfied with or denied services in their Program Policies and Procedures Manual.

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**Eligible Clients 690-01-20**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Providing Adult Protective Services 690-01-23**  
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North Dakota Century Code § 50-06-05.3(2) requires Regional Human Service Centers to provide services to prevent or remedy the neglect, abuse, or exploitation of adults unable to protect their own interests.

The Aging Services Division have designated staff at the Regional Human Service Centers or have entered into contractual agreements with other agencies to accomplish this requirement.

If Aging Services Division or the Department's Designee determines a vulnerable adult demonstrates a need for adult protective services, the worker shall arrange for provision of adult protective services provided that the vulnerable adult consents to and accepts the services. If vulnerable adult is unable to consent, please refer to [690-01-23-20](#) for further information.

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**Eligible Clients 690-01-23-01**  
**(Revised 1/15/14 ML 3394)**

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An eligible client is an individual age 18 and older or a minor emancipated by marriage who has a substantial mental or functional impairment that compromises health, safety, or independent life style.

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**Cost of Services 690-01-23-05**

**(Revised 4/1/13 ML 3366)**

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The Department is not responsible for the cost of providing services unless a law specifically provides for the provision of services and funding exists to provide the service. N.D.C.C. § [50-25.2-08](#).

No vulnerable adult will be turned away from services due to financial reasons.

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**Voluntary Services 690-01-23-10**

**(Revised 1/15/14 ML 3394)**

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The Vulnerable Adult Protective Services Program was established to safeguard the rights, safety, and well-being of vulnerable adults. If services are provided on a voluntary basis, the following issues must be considered:

- If the vulnerable adult has the capacity to reach rational decisions, he or she should be allowed to live in a manner he or she chooses.
- Vulnerable adults who receive voluntary services have the right at any time and within their abilities, to make an informed choice and refuse services.
- In determining if voluntary services are appropriate, the worker shall consider the vulnerable adult's ability to consent. If a question exists, the worker shall seek input from other appropriate professionals. ([690-01-23-20](#))

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**Mandatory Reporting or Referral of Abuse, Neglect, or  
Exploitation 690-01-23-15**

**(Revised 1/15/14 ML 3394)**

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Any medical or mental health professional or personnel, law enforcement officer, firefighter, member of the clergy (unless derived from information received in the capacity of spiritual advisor), or caregiver having knowledge that a vulnerable adult has been subjected to abuse or neglect, or who observes a vulnerable adult being subjected to conditions or circumstances that reasonably would result in abuse or neglect, shall report the information to the department or the department's designee or to an appropriate law enforcement agency. N.D.C.C. § [50-25.2-03](#).

Reports can be made using [SFN 1607](#) or via phone, email, or fax.

A report to the North Dakota Protection & Advocacy Project, if required by N.D.C.C. § 25-01.3-04, satisfies all reporting requirements of this chapter.

Any individual, not required to report, who has reasonable cause to believe that a vulnerable adult has been subjected to conditions or circumstances that would result in abuse, neglect, or exploitation may report the information to the department or the department's designee.

A law enforcement agency receiving a report, under this law, shall immediately notify the Aging Services Division department or the department's designee.

Any individual required to report under this section who willfully fails to do so is guilty of an infraction. N.D.C.C. § 50-25.2-10.

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## **Involuntary Services 690-01-23-20**

**(Revised 1/15/14 ML 3394)**

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If a vulnerable adult who is subject to abuse, neglect, or exploitation is unable to make an informed consent or accept services or if the caregiver refuses, involuntary services may be pursued. The worker may pursue any administrative, legal or other remedies authorized by law that are necessary and appropriate under the circumstances to protect the vulnerable adult and prevent further abuse or neglect. The state's attorney of the county in which the vulnerable adult resides may assist the worker, upon request, in pursuing an appropriate remedy. Available remedies include:

- The appointment of a guardian under North Dakota Century Code Chapter [30.1-28](#) or a conservator under North Dakota Century Code Chapter [30.1-29](#);
- A restraining order or other court order necessary under the circumstances;
- The removal of an abusive or neglectful guardian or conservator and the appointment of a suitable person as a guardian or conservator, (pursuant to North Dakota Century Code Chapters 30. 28-07 and 30.1-29.15);
- The provision of appropriate treatment under North Dakota Century Code Chapter [25-03.1](#) (Commitment Procedures);
- The criminal prosecution of the individual responsible for abuse or neglect; and
- Any other available administrative, legal, or other remedies on behalf of the vulnerable adult. N.D.C.C. § [50-25.2-07](#).

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When providing involuntary services, the worker shall consider that the vulnerable adult receiving involuntary services has the right to receive services that are the least restrictive alternative available that still meet the vulnerable adult's needs and that the vulnerable adult has a right to representation through formal or informal channels.

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## **Referral of Report Concerning Long-Term Care Facilities 690-01-23-25**

**(Revised 1/15/14 ML 3394)**

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The State Long-Term Care Ombudsman must be notified of any report or referral concerning any **administrative action** that may adversely affect the health, safety, welfare, or personal or civil rights of a resident in a long-term care facility or tenant in an assisted living facility. The State Long-Term Care Ombudsman must also be notified if there is an alleged administrative action on a person who was discharged from a long-term care facility within nine months of the complaint.

If a report alleges abuse, neglect, or exploitation of a resident in a nursing facility, basic care, swing bed facility, or hospital the report is documented as an I & R and referred to the N.D. Health Department for follow-up.

[\(Appendix A\)](#)

If a report alleges financial exploitation of a resident in a nursing facility, basic care, swing bed facility, or hospital the report remains with the Vulnerable Adult Protective Services worker. [\(Appendix A\)](#)

If a report alleges abuse, neglect, exploitation or financial exploitation of a resident in an assisted living facility the report remains with the Vulnerable Adult Protective Services worker who will work in collaboration with the Ombudsman as needed. [\(Appendix A\)](#)

The State Long-Term Care Ombudsman will collaborate with the Vulnerable Adult Protective Services worker on cases as needed. The intent is that the referral or assessment be done in a cooperative manner with all interested parties.

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**Referral of Report Concerning Qualified Service Providers  
690-01-23-30**

**(Revised 1/15/14 ML 3394)**

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The Home and Community-Based Services (HCBS) Case Manager has the responsibility to examine alleged quality of care issues for clients receiving home and community-based services funded under Service Payments for Elderly and Disabled, Expanded Service Payments for Elderly and Disabled, and the Medicaid Waivers, such as Family Personal care, Home Delivered meals, and Extended Personal Care.

**In the event of suspected abuse, neglect, or exploitation, HCBS case manager will report to and coordinate with the region's designated Vulnerable Adult Protection Services worker.**

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**Referral of Report Concerning Adult Family Foster Care  
690-01-23-35**

**(Revised 1/15/14 ML 3394)**

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If a resident of an adult family foster care home is receiving Home and Community-Based Services (HCBS), the HCBS Case Manager has primary responsibility to resolve concerns in collaboration with the licensing facility. If there is no HCBS Case Manager, the licensing worker has primary responsibility to resolve licensing or quality of care issues in collaboration with the Vulnerable Adult Protection Services worker and licensing facility. The intent is that the referral or assessment be done in a cooperative manner with all interested parties.

**In the event of suspected abuse, neglect, or exploitation, HCBS case manager will report to and coordinate with the region's designated Vulnerable Adult Protection Services worker.**

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**Referral of Report Concerning Family Caregivers  
690-01-23-40**

**(Revised 1/15/14 ML 3394)**

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Department of Human Services Family Caregiver Coordinators who suspect alleged abuse, neglect, or exploitation shall report to and collaborate with the Vulnerable Adult Protective Services worker in their region. The intent is that the referral or assessment be done in a cooperative manner with all interested parties.

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**Referral of Report Concerning Special Populations  
690-01-23-45**

**(Revised 1/15/14 ML 3394)**

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The North Dakota Protection and Advocacy Project has responsibility to investigate allegations of abuse, neglect, or exploitation for individuals with developmental disabilities and adults suffering from a mental illness who are an in-patient or resident in a facility rendering care or treatment, even if the location of the person is unknown. Adults who suffer from a mental illness who are in the process of being admitted to a facility rendering treatment, including persons being transported or who within the last 90 days was an in-patient or resident of a facility rendering treatment of care.

The North Dakota Protection and Advocacy Project also has responsibility to investigate allegations of abuse, neglect, or exploitations for adults suffering from a mental illness who are receiving publicly funded services. [\(Appendix A\)](#) As needed, the Vulnerable Adult Protective Services worker will collaborate with The North Dakota Protection and Advocacy Project.

N.D.C.C. § [25-01.3-01](#) and 25-01-3.04.

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**Contact With the Vulnerable Adult or Other Individuals  
690-01-23-50**

**(Revised 1/15/14 ML 3394)**

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Aging Services Division or the Department's Designee may interview the alleged vulnerable adult with or without notice to the caregiver or any other individual. N.D.C.C. § [50-25.2-05\(1\)\(a\)](#).

Face-to-face contact is considered the optimal environment. The worker should identify himself/herself and explain the purpose of the visit.

Whenever possible, the vulnerable adult should be interviewed alone. The caregiver and any other individual who may have knowledge of the circumstances regarding the report or referral may also be interviewed. Whenever possible, each individual should be interviewed alone. A comparison of information obtained by the individual interviews, will give the worker a more accurate picture of the circumstances and potential needs of the vulnerable adult and other individuals in the household.

The Risk Assessment Form found in the Harmony for Adult Protective Services (HAPS) web-based data collection system may be used to record interactions and observations.



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**Entry to the Residence or Premises 690-01-23-55**  
**(Revised 4/1/13 ML 3366)**

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Aging Services Division or Department's Designee may enter any premises in which the alleged vulnerable adult is an occupant, with the consent of the alleged vulnerable adult or the caregiver. N.D.C.C. § [50-25.2-05\(1\)\(b\)](#).

If the alleged vulnerable adult denies entry, a search warrant may be issued by a magistrate pursuant to law upon a showing of probable cause to believe that abuse, neglect, or exploitation has occurred. A law enforcement officer may make a reasonable entry of the premises without a search warrant or consent of the alleged vulnerable adult or caregiver for the purpose of rendering assistance if the officer has probable cause to believe that the delay of entry would cause the alleged vulnerable adult to be in imminent or serious physical injury or death. N.D.C.C. § 50-25.2-05(3).

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**Collateral Contacts 690-01-23-60**

**(Revised 4/1/13 ML 3366)**

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Collateral contacts are sources that have information on special circumstances that will assist in the evaluation or assessment of a report or referral. Collateral sources may include but not be limited to the following: law enforcement, medical professionals, relatives of the vulnerable adult, neighbors, other agencies and providers, the reporter of the referral, educators and state's attorneys.

Law enforcement officials are encouraged to provide collateral information. The vulnerable adult may need to sign an authorization to disclose information in order for information to be disclosed by these sources. When necessary, the authorization to disclose information may be witnessed by an individual other than the worker.

Whenever possible, the worker should inform the vulnerable adult of his or her intent to contact collateral sources and obtain a signed authorization for disclosure of information for this purpose. Circumstances that may prohibit informing the vulnerable adult of intent to contact collateral sources include when there is reason to believe that a serious emergency exists that endangers the health and safety of the vulnerable adult; when the worker lacks sufficient information to evaluate the seriousness or appropriateness of the report or referral; and when the worker has attempted to inform the vulnerable adult, but because of impaired mental functioning, the adult may be unable to consent to such contacts and no guardian has been appointed. If the vulnerable adult is impaired and does not have a court appointed guardian, the worker is empowered to request collateral information in order to provide needed services for the vulnerable adult.

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**Contact with Law Enforcement Officials 690-01-23-65**  
**(Revised 4/1/13 ML 3366)**

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In all cases of alleged abuse, neglect, or exploitation, Aging Services Division or the Department's Designee may request assistance from law enforcement officials in an evaluation for the provision of other adult protective services.

If a report or referral indicates violation of a criminal statute or an imminent danger of serious physical injury or death of the vulnerable adult, the law enforcement agency may investigate the allegations of the report or referral, take immediate steps necessary to protect the vulnerable adult, and if appropriate, institute legal proceedings. N.D.C.C. § [50-25.2-05\(2\)](#).

Law enforcement officials are authorized to take photographs as a part of a criminal investigation.

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**Denial of Services 690-01-23-70**

**(Revised 4/1/13 ML 3366)**

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Vulnerable Adult Protective Services may be denied if:

- The individual is not an adult.
- The individual is not vulnerable by program criteria.
- The individual is not residing within the state of North Dakota.
- The vulnerable adult is already receiving sufficient services to prevent, correct, or discontinue abuse, neglect and self- neglect; the services are being provided in the least restrictive manner possible; and the services are promoting the self-care and independent living of the vulnerable adult.
- Existing support systems are willing to assist the vulnerable adult with appropriate services.
- The individual is residing on an Indian reservation and no cooperative agreement has been developed between the tribal government and the Department of Human Services.
- The referral requests only specific services (such as guardianship or conservatorship services) that are obtainable through other agencies.

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**Voluntary Reporting or Referral of Abuse, Neglect, or  
Exploitation 690-01-25**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Confidentiality of Reports or Referrals and Records**  
**690-01-25-01**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Authorized Disclosures 690-01-25-01-01**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Immunity From Liability 690-01-25-05**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Penalty and Civil Liability for False Reports or Referrals**  
**690-01-25-10**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Employee Retaliation 690-01-25-15**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Content of Voluntary Report or Referral 690-01-25-20**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Immunity From Liability 690-01-28**  
**(Revised 1/15/14 ML 3394)**

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The following are immune from any civil or criminal liability that might result from actions taken in reporting of any alleged abuse, neglect, or exploitation:

- Any individual acting in good faith, other than the individual responsible for the alleged abuse, neglect, or exploitation; and
- Any individual employed by the Department or a law enforcement agency conducting or supervising an investigation, evaluation or assessment, or enforcing provisions of the law if the individual is acting in good faith and exercising due care. N.D.C.C. § [50-25.2-09](#).

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**Evaluation and Assessment 690-01-30**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Evaluation of a Report or Referral - Priority of Response  
690-01-30-01**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Referral of Report Concerning Long-Term Care Facilities  
690-01-30-05**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Referral of Report Concerning Qualified Service Providers  
690-01-30-10**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Referral of Report Concerning Adult Family Foster Care  
690-01-30-15**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Referral of Report Concerning Family Caregivers  
690-01-30-20**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Referral of Report Concerning Special Populations  
690-01-30-25**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Penalty and Civil Liability for False Reports or Referrals  
690-01-33**

**(Revised 1/15/14 ML 3394)**

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Any person required to report who willfully fails to do so is guilty of an infraction. N.D.C.C. § 50-25.2-10.

Any individual who willfully makes a false report or referral or provides false information that causes a report or referral to be made is guilty of a class B misdemeanor. If the false report or referral is made to a law enforcement official, the individual is guilty of a Class A misdemeanor. False reports or referrals may be reported to the state's attorney or law enforcement official having jurisdiction in that area.

An individual who willfully makes a false report or referral or provides false information that causes a report or referral to be made is liable in a civil action for all damages reported by the person reported. N.D.C.C. § [50-25.2-10](#).

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**Access to Records of the Vulnerable Adult 690-01-35**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Employee Retaliation 690-01-38**

**(Revised 4/1/13 ML 3366)**

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An employer who imposes any form of retaliation against an employee who reports an alleged abuse, neglect, or exploitation in good faith is guilty of a Class B misdemeanor.

An employer who retaliates against an employee who reports an alleged abuse, neglect, or exploitation in good faith is liable to that employee in a civil action for all damages.

A rebuttable presumption that retaliation has occurred arises when an adverse action is taken within ninety days of the report or referral. An adverse action includes the discharge from or termination of employment; the demotion, negative work performance evaluation, reduction of hours worked, reduction of benefits or work privileges, or reduction in remuneration for services of the employee; or the restriction or prohibition of access by the employee to any place of employment or persons affiliated with the place of employment. N.D.C.C. § [50-25.2-11](#).

Employee retaliation may be reported (by the employee) to the state's attorney having jurisdiction in that area.

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**Entry to the Residence or Premises 690-01-40**

**REPEALED**

**(Repealed 4/1/13 ML 3366)**

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**Program Reporting Requirements 690-01-43**  
**(Revised 4/1/13 ML 3366)**

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Upon receipt of a referral, designated staff must evaluate and assess any report or referral of alleged abuse, neglect or exploitation.

Designated staff are required to input information into the Harmony for Adult Protective Services (HAPS) web-based data collection system in a timely manner. The Aging Services Division's Elder Rights Administrator will collect data quarterly; fifteen days after the end of the quarter.

Required program reporting is found in the Harmony for Adult Protective Services (HAPS) web-based data collection system and includes the intake and assessment and all related forms.



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**Utilizing the Harmony for Adult Protective Services  
(HAPS) Web-Based Data Collection System 690-01-43-01  
(Revised 1/15/14 ML 3394)**

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**Utilizing the Harmony for Adult Protective Services (HAPS) Web-Based Collection System**

**Information & Referral/Screened Out Intake** – An inquiry not meeting the criteria for full assessment, in which assistance is given to help individuals gain access to services, through provision of information or a misdirected phone call.

Examples may include:

- Reports regarding an individual under the age of 18. Such reports should be referred to the appropriate social service agency;
- Reports that include involvement of other formal or informal resources that will address or resolve the presenting problem;
- The adult or situation is currently or was recently known to Adult Protective Services and the report does not provide additional information or circumstances to require further assessment;
- Reports concerning adults being discharged to community from treatment facilities when the need for services is placement only;
- Reports concerning adults lacking resources due to a travel related incident, unemployment, or transient lifestyle;
- Reports concerning an adult in another state; or
- Reports concerning an adult with developmental disabilities or mental illness who are an in-patient or resident in a facility providing care. Such reports should be referred to the North Dakota Protection and Advocacy Project ([Appendix A](#)).

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**Full Assessment/Screened In Intake** – Require a home visit and completion of the assessment report and are conducted to:

- Determine if criteria for vulnerability are met. Criteria for vulnerability include substantial mental or functional impairment or both.
- Determine if the vulnerable adult is in need of adult protective services or is in need of services to support or maintain independent living.
- Determine the vulnerable adult's capabilities and limitations.
- The worker may use the Vulnerable Adult Protective Services Risk Assessment form found in the HAPS computer system.
- Formulate, with the vulnerable adult and other support persons a plan to meet those needs in the least restrictive environment.
- Evaluate the effectiveness of the plan and reassess needs as necessary.

The assessment should include careful observation of the vulnerable adult's environment. Areas to observe include:

- **The Neighborhood** – Does it appear safe? Are the buildings, sidewalks, etc., well maintained? Is public transportation available? Is there access to health care, shopping, religious, and social activities?
- **The Home** – What is the general impression of the home? Is the access uncluttered? Does the home accommodate physical disabilities of the vulnerable adult?
- **The Living Environment** – Are there environmental factors that suggest the vulnerable adult may have difficulty

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maintaining independent living skills without assistance, i.e. spoiled food on the counters, excess garbage, urine odor, too hot, too cold, etc.?

The physical evidence should also be observed. It is necessary to locate items that could be used to identify and describe incidences of abuse, neglect or exploitation made in the report or referral. Physical evidence may include clothing worn by the vulnerable adult that contains blood, semen, other body fluids; clothing that is torn; weapons; photographs; and x-rays. The worker should not collect physical evidence – it should be left undisturbed until law enforcement can be called to collect it for possible criminal charges. Observations can be recorded on the Risk Assessment or in the documentation section of the Harmony for Adult Protective Services (HAPS) web-based data collection system.

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## **Intake Report 690-01-43-05**

**(Revised 1/15/14 ML 3394)**

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Designated Vulnerable Adult Protection Services workers shall record intake information in the Harmony for Adult Protective Services (HAPS) web-based data collection system to include, when available:

- The adult's demographic information, such as name, gender, date of birth or approximate age, address, current location if different from permanent address, and phone number;
- The reporter's demographic information, unless the reporter requests anonymity, such as a name , phone number, address, relationship to client, and the reporter's agency or place of business;
- Allegations of abuse, neglect, or exploitation;
- Safety concerns for the adult;
- Safety concerns for the staff;
- The alleged offender's information, such as name, gender, address, phone number, and relationship to the client (when abuse is alleged and if available); and
- If an assessment is not completed; a reason why it was not completed.

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**Maintenance of Client Files 690-01-43-10**

**(Revised 1/15/14 ML 3394)**

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The following must be adhered to:

- Vulnerable Adult Protective Service client files will be maintained in the Harmony for Adult Protective Services (HAPS) web-based data collection system and required supporting documentation such as releases of information will be maintained in a secure area.
- Files made prior to the implementation of the Harmony for Adult Protective Services (HAPS) web-based data collection system are to be maintained in a separate filing system and kept in a locked file cabinet. It is recommended the most recent two years be kept in the Aging Unit and inactive records be kept in a secure locked area.
- Files will be filed by year and alphabetically (no numbering system).
- Destruction or storage of files will be conducted in accordance with the records management policy of the Department consistent with Older Americans Act (OAA) requirements 650-25-25-50(3) OAA Policy & Procedure Manual.
- Contract entities must follow the same procedures for confidentiality of and maintenance of client files. If the entity is no longer under contact with the Department, the records are property of the Department and must be transferred to the Aging Services Unit.

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**Evaluation and Assessment of a Report or Referral -  
Priority of Response 690-01-43-15**

**(Revised 1/15/14 ML 3394)**

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The following levels must be used to determine priority of response:

- **Emergency:** When factors present the adult is at urgent and significant risk of harm due to the severity of the alleged abuse, or due to the vulnerability or physical frailty of the adult, designated staff shall make face-to-face contact within five (5) hours. If unable to make contact within that time frame, designated staff shall contact law enforcement for assistance.
- **Priority 1:** When factors present the adult is not in imminent danger or urgent risk or harm but alleged abuse is present or conditions exist that might reasonably result in abuse, the designated staff shall make face-to-face contact with the adult no later than five (5) working days beginning the day after the receipt of the report.
- **Priority 2:** When factors present the adult is not in imminent danger or urgent risk or harm but conditions exist that are of concern, designated staff shall make face-to-face contact with the adult no later than ten (10) working days beginning the day after the receipt of the report.
  - When the initial attempt at face-to-face contact with the adult is unsuccessful, an attempt at face-to-face contact shall be made every other day for a minimum of three (3) attempts.
    - If designated staff has confirmed the adult to be unavailable or safe, the reason for delayed response shall be documented.

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- Initial and subsequent attempts at contact shall begin immediately when the adult becomes or is expected to become available.
- Following the third unsuccessful attempt at contact, designated staff may choose to send a letter requesting an appointment with the adult.
- If attempts at contact remain unsuccessful, designated staff shall close the referral no later than twenty (20) working days after receipt of the report.
- Designated staff shall document all attempts to contact the adult.
- When the report originally appears to indicate a need for face-to-face contact but further assessment determines that a face-to-face contact is not required to resolve potential risk, designated staff may provide telephone response and assistance. Referrals appropriate for telephone response and assistance include those:
  - That present heightened worker safety concerns and upon consultation, law enforcement directs staff not to respond.
  - That present heightened worker safety concerns due to environmental or infectious disease concerns and upon consultation, first responders, public health officials, or code enforcement directs staff, or any combination thereof, not to respond.
  - In which it is determined that responsible family is aware of the concerns and is working appropriately to address the concerns.
  - Regarding a chronic situation in which staff has had a visit with the competent adult in the past twenty (20) working days and determined intervention is unwanted or could not resolve the concern.

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- In which the adult is competent and able, with assistance from designated staff or other support systems, to arrange services.
- Regarding adults that have a case manager in place, and calls between staff and the case manager can resolve the reporter's concerns.
- In which the adult is hospitalized or institutionalized prior to the initial visit and designated staff have determined that ongoing protective services are not required. If the adult is hospitalized or institutionalized outside the area of service and requires ongoing protective services, the referral shall be transferred.



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**Access to Records of the Vulnerable Adults 690-01-43-20**  
**(Revised 4/1/13 ML 3366)**

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For the purpose of evaluating or assessing a report or referral or providing other adult protective services, Aging Services Division or the Department's Designee may have access to all records of the vulnerable adult if the vulnerable adult, or the caregiver or legal representative of the vulnerable adult has authorized access; or if the vulnerable adult, because of a substantial functional or mental impairment, is unable to authorize access, does not have a legal guardian or other legal representative, and is the individual who is the alleged vulnerable adult addressed in the report.

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**Case Closure 690-01-43-25**

**(Revised 4/1/13 ML 3366)**

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Services may be terminated through action of the Vulnerable Adult Protective Services worker, the vulnerable adult, or the adult's legal representative. The vulnerable adult will be involved in the termination process to the maximum degree possible.

The worker may initiate case closure when:

- Reasonable attempts have been made, and with the help of appropriate collaterals, the worker has been unable to locate the vulnerable adult.
- The death of the vulnerable adult.
- The vulnerable adult is institutionalized or otherwise receiving appropriate services.
- The case is transferred to another agency, such as domestic violence or Protection and Advocacy.
- The vulnerable adult has moved to another location in North Dakota. If the adult has moved and is in need of further services, the case should remain open and be transferred to another Vulnerable Adult Protective Services worker if needed.
- The vulnerable adult has moved out of the state.
- Appropriate resources do not exist within the community or region to assist the vulnerable adult, or existing services have been exhausted.
- Crisis intervention has successfully resolved current problems with no additional needs identified.

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The vulnerable adult may initiate activities to close the case with Vulnerable Adult Protective Services. These activities include:

- The vulnerable adult has refused contact – no full assessment was possible and there was insufficient information to pursue legal remedies.
- The vulnerable adult or the caregiver misrepresented the adult's needs, or willingness to participate.
- The vulnerable adult has withdrawn his or her request for services.

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**Contact with Law Enforcement Officials 690-01-45**

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**Contact With the Vulnerable Adult or Other Individuals  
690-01-50**

**REPEALED**

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**Collateral Contacts 690-01-55**

**REPEALED**

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**Completing the Mandatory Vulnerable Adult Protective  
Services Report 690-01-60**

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**Assessment 690-01-65**

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**Observation of the Environment 690-01-65-01**

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**Observation for Physical Evidence 690-01-65-05**

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**Observation for Abuse, Neglect, and Exploitation  
690-01-65-10**

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**Providing Adult Protective Services 690-01-70**

**REPEALED**

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**Development of a Service Plan 690-01-70-01**

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**Voluntary Services 690-01-70-05**

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**Involuntary Services 690-01-70-10**

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**Cost of Services 690-01-70-15**

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**Denial of Services 690-01-70-20**

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**Termination of Services 690-01-70-25**

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**Worker Initiated Termination of Services 690-01-70-30**

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**Vulnerable Adult Initiated Termination of Services  
690-01-70-35**

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**Forms Appendix 690-01-75**

**SFN 1265, Vulnerable Adult Protective Services Data  
Collection Form & Instructions 690-01-75-01**

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**SFN 1268, Vulnerable Adult Protective Services Screening  
Report Form & Instructions 690-01-75-05**

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**SFN 1267, Vulnerable Adult Protective Services Risk  
Assessment Form & Instructions 690-01-75-10**

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**SFN 1266, Vulnerable Adult Protective Services Service  
Recommendations or Plans Form & Instructions 690-01-  
75-15**

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**SFN 351, Case Activity Log 690-01-75-20**

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**SFN 605, Mandatory VAPs Form, 690-01-75-25**

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